IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-09-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL Nos.309 & 310 of 2004

M.Vijayakumar ... Appellant

-vs-

1.Chennai Metropolitan Water Supply
and Sewerage Board,
rep.by its Chairman and Managing Director,
No.1, Pumping Station Road,
Chennai-600 002.

2.The Secretary-cum-General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
(Personnel & Admn.VC) Department,
No.1, Pumping Station Road,
Chinthadripet,
Chennai-600 002. ... Respondents

Appeals against the order, dated 07.03.2003, made in Review Application No.103 of 2002 and the order, dated 23.01.2002, made in W.P.No.4184 of 1999 on the file of this Court.

WP 4184/99: Presented this Court under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus calling for the records the 2nd respondent in Proc. No. CMWSSB/P&A/STE/VC2/30442/98 dt.3.12.98 and the order of removal passed by the 1st respondent in Proc. No.MMWSSB/P&A/RA2/83553/86 dt.12.4.89 and quash the same and direct the respondent to reinstate the petitioner with all monetary seniority and other attendant benefits.

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For appellant : Mr.N.G.R.Prasad,
for M/s.Row and Reddy.

For respondents : Mr.B.Shanthakumar,
Senior Panel Counsel.

COMMON JUDGMENT

S.PALANIVELU,J.

The factual matrix appears thus :

The appellant was appointed as Assistant Engineer in the respondent Board on 24.09.1983. He was subsequently transferred to Area-I at Nainiappa Garden Street, Tondiarpet, Chennai, on 25.10.1986. While he was working in that capacity, based on the complaint lodged by one Mohammed Ghouse, that the appellant demanded a bribe of Rs.300/- to provide sewerage connection to his house, a trap was organised by the DSP, attached to Vigilance and Anti-Corruption Department, on 10.11.1986 and the appellant was caught red-handed and he was arrested when he demanded and accepted the bribe amount of Rs.300/= from the said Mohamed Ghouse.. Thereafter, he was suspended on 11.11.1986 and a domestic enquiry was instituted for the following charges:

> "1.That he, as per the report received from Vigilance and Anti-corruption Dept., has demanded and accepted a bribe of Rs.300/- from Thiru Mohammed Ghouse assuring him sewerage connection to his house at No.1, Nainiappa Mudali Garden Third St., Old Washermanpet, Madras-21, and red-handedly caught by the Vigilance & Anti Corruption Dept.officials on 10.11.'86 while on duty at Depot-9, Area-I of the Board, and this amounts to very serious misconduct on the part of the individual, as provided in Regulation 6 (29) of MMWSS Board Employees (Discipline and Appeal) Regulations, 1978;
> 2. That his arrest for accepting bribe has been flashed and thus his conduct has caused damage to the image of the Board;
> 3. That he being arrested and released on bail for demanding and accepting bribe has become untrustworthy and unsuitable to hold his post in the Board; and
> 4.That he violated the Conduct Regulations by accepting illegal gratification and also proved to be very disloyal to the organisation which pays him."

2. The Enquiry Officer, appointed by the management, after

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recording evidence and perusing the records, came out with a finding, adverse to the appellant, consequent to which the appellant was removed from service on 12.04.1989. Against the said removal, the appellant filed W.P.No.4184 of 1999 before this Court and a learned single Judge of this Court dismissed the said petition, justifying the dismissal of the appellant from service. Aggrieved, the appellant carried the matter before a Division Bench of this Court in W.A.No.964 of 2002, wherein the learned counsel for the appellant sought permission of the Court to withdraw the appeal, for the purpose of filing a review application before the learned single Judge. Hence, the appeal was dismissed as withdrawn, giving liberty to the appellant, to prefer a review application. Thereafter, the appellant filed Review Application No.103 of 2002, in which, the very same learned single Judge passed an order, dismissing the application, on 07.03.2003. Against the said order in review application and the order in writ petition, the present appeals are preferred.

3. The learned counsel for the appellant, besides reiterating the contentions raised by them in the grounds of appeal, would also submit that the entire enquiry proceedings are conducted in an unlawful manner and a major punishment of dismissal from service was inflicted on the appellant, which needs interference by this Court.

4. On the contrary, the learned counsel for the respondents has argued that the scope of judicial review in such matters of disciplinary proceedings is very limited and when there are no lapses or lack of opportunity in the domestic enquiry, the Courts should not interefere with the findings recorded by the Enquiry Officer and the punishmed inflicted by the Disciplinary Authority.

5. Judicial review by the Courts is permitted by illuminating pronouncements of the Hon'ble Supreme Court in its various judgments, when it is found that the findings of the inquiry report is based on no evidence or if the finding is perverse.

6. Law of the land in this regard has been highlighted by the Hon'ble Supreme Court in *Kuldeep Sing* v. *Commissioner of Police and Others*, 1999 (2) Supreme Court Cases 10, in the following manner :

> "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to

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the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of A.P.* v. *Rama Rao* ((1964)2 LLJ 150, AIR 1963 SC 1723:(1964) 3 SCR 25 in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India* v. *Prakash Chand Jain* (1969) 2 LLJ 377: AIR 1969 SC 983 and *Bharat Iron works* v. *Bhagubhai Balubhai Patel* (1976) 1 SCC 518: 1976 SCC (L&S) 92: 1976 Lab IC 4: AIR 1976 SC 98: (1976) 2 CSR 280. In *Rajender Kumar Kindra* v. *Delhi Admn.* (1984) 4 SCC 635: 1985 SCC (L & S)131: AIR 1984 SC 1805:(1985)1 SCR 866, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse."

7. In MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437, considering the entire case law on the subject of judicial review, the Apex Court has categorically and in no uncertain terms has ruled:

"When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

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8. Following the principles laid down in the decisions aforestated, it is to be made clear that when the findings of the enquiry officer recorded in the Departmental enquiry proceedings are found to be perverse, this Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, is fully competent to interfere with such illegal findings.

9. As directed by us to produce all the relevant files containing the material papers and particulars with regard to the appellant's case, including the records covered by the enquiry officer, the first respondent produced the records before this Court. On a perusal of the records relating to the entire enquiry proceedings produced before us by the respondents, we are able to find that there is no evidence to sustain the charges framed against the appellant officer in the proceedings. Further, the enquiry officer has reached erroneous findings, resulting in miscarriage of justice. In such a situation, as has been held by the Honourable Apex Court in the judgment cited supra, this Court can very well interfere with such findings, since being not supported by sufficient materials.

10. Going by the observations and the manner of approach by the enquiry officer in the conduct of the enquiry and rendering of the findings, this Court holds that the findings arrived at by the enquiry officer are on "no evidence" and perverse as well. When the judicial review is inevitable, the Court is entitled to re-appreciate the evidence on record. Since in the case on hand, in the considered opinion of this Court, based on an erroneous finding, the enquiry officer has found the charges proved and the Disciplinary Authority also has inflicted the major punishment of dismissal from service, based on such an erroneous conclusion arrived at by the Enquiry Officer, thus depriving the livelihood of the employee/appellant, following the above said judgment of the Honourable Apex Court, it has become incumbent on the part of this Court to reappraise all the materials, discussed by the enquiry officer, to a considerable extent, in order to reach a definite conclusion.

11. On a perusal of the entire materials placed on record, we are able to find that there are sufficient number of licensed plumbers to attend the works of giving or restoring the drainage connections and it appears that it is the practice adopted by the Board to carry out such works through the licensed plumbers, who attend to works after the parties concerned approach them and pay prescribed charges. If there are no licensed plumbers, the administration of the Board in the matter of giving connections or restoring them to the customers would be practically difficult. In the case on hand, the work of Mohammed Ghouse had to be attended by

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one Kothandapani, a licensed plumber, concedingly. But, from the records, it is seen that both of them had not met each other personally. Kothandapani delivered two printed forms unfilled, prescribed by the first respondent Board for the said purpose to the appellant along with two more blank sheets with his signatures. These four documents, besides his signature, bear his rubber stamp.

12. Pertinent it is to state that the signatures of the complainant/Mohammed Ghouse were also obtained in the above said documents, which was admitted by him in the cross-examination of his evidence. This is the only apparent nexus between the customer and the licensed plumber in this case.

13. As has already been adverted to supra, on our direction for production of the relevant files containing the material papers and particulars with regard to the appellant's case, including the records covered by the enquiry officer, and in pursuance of the said direction, the first respondent produced the records before this Court, which are more helpful to unearth the truth in the matter. For convenience, the said files have been numbered as File No.1 and File No.4. In this judgment, the relevant particulars, as found in various pages, are referred. In file No.4, page numbers 91,93,95 and 97 are the above referred documents, which are blank with signatures of Mohammed Ghouse and Kothandapani. The complainant's version was that after the appellant demanded him a bribe of Rs.300/- on 07.11.1986, he approached the DSP of Vigilance and Anti-corruption Department and lodged a complaint, on the basis of which a trap was proposed. Two Government officials, namely, G.Kaliyaperumal, Superintendent, O/o. the Director of Fisheries, Madras, and K.Janarthanan, Assistant of the same Department, were taken as witnesses for this purpose. On 10.11.1986 at about 10.00 a.m., the complainant paid Rs.300/- to the appellant in his office and afterwards he came out and gave signal to the DSP, who was waiting outside, as per the pre-arrangement, and then the DSP, along with the witnesses, entered into the office room of the appellant and introduced themselves. On a query, the appellant told them that he received Rs.300/- from Mohammed Ghouse, adopting the prescribed procedure. The explanation of the appellant in this regard was that the licensed plumber authorised him to receive Rs.300/- on his behalf from Mohammed Ghouse, for carrying out the work of giving sewerage connection, since the plumber is a handicapped person, and that he did not demand the amount as bribe. But, the definite allegation of the complainant was that he paid the amount as bribe.

14. In order to find out as to which version contains the truth, certain circumstances need to be scrutinised. In this connection, the explanation of the appellant immediately after the trap, needs to be looked into. Page No.223 of File No.1 is the statement of the appellant before the DSP on 10.11.1986. He has

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stated therein that Mohammed Ghouse brought sewerage application forms and estimate forms in duplicate with the signatures of Mohammed Ghouse and K.G.Kothandapani, licensed plumber, in unfilled form; he received them and kept in his table drawer; he was to summon the licensed plumber after payment of necessary amount in the bank towards water and sewerage fee; on 10.11.1986, he returned to his depot office at about 12.00 noon, after visiting the work spots in various places along with his assistants; Mohammed Ghouse came and gave Rs.300/- to him for expediting the matter connected with the sewerage application and he accepted the same, but, he had never demanded any amount from him; he had given the amount voluntarily and, hence, he accepted the amount.

15. In this regard, the letter, dated 05.11.1986, given by Kothandapani to the Board, assumes significance, wherein, it is stated as follows :

(i) Preparing estimate Sanitary Application paper charge	Rs. 70.00
(ii) Labour Charges for work	Rs 180.00
(iii) Supervision charges	Rs. 50.00
Total amount for work	Rs.300.00

and all the materials for sewerage connection should be supplied by the party. He has mentioned therein that he, being a handicapped man, asked the Assistant Engineer, if the party accepts to his charges as mentioned above, to obtain the party's signature in the sanitary application estimate form and sketch papers and receive the full amount of Rs.300/- and then inform him. One of the engineers has stated before the enquiry officer that the plumber could not authorise any Assistant Engineer to receive the amount on his behalf, however, it has occurred in this case.

16. It transpires from the statement of Mohammed Ghouse that one Munusamy, who is the assistant of the appellant, received Rs.100/- for the above said purpose. But, Munusamy, in his statement, denied the same, as found in page 179 in File No.4. The statement of the complainant before the DSP was that Munusamy, in the presence of the appellant, received Rs.100/-, representing that for the purpose of necessary forms and for getting sanction, Munusamy obtained his signatures in two printed forms and two blank papers. So, it is his statement that for expenses of forms, sketches and labour charges, Munusamy received Rs.100/-, which Munusamy denied. According to the licensed plumber, labour charges would come to Rs.180/- and supervision charges to Rs.50/-. When that be so, the sum required for carrying out the sanitary work would definitely exceed Rs.200/-, apart from the expenditure of materials for constructions to be provided by the house owner.

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Hence, the version that Munusamy received Rs.100/- alone for the above said work, as stated by the complainant, does not contain any truth.

17. If Rs.300/- is paid to the appellant as bribe, the next question as to what about the charges for carrying out the work remains unanswered. It is an admitted fact that apart from the alleged payment of Rs.300/-, as aforestated, the complainant did not part with any amount towards the works, such as expenses for forms, labour charges and supervision charges. The complainant had not stated as to whether he spent any amount towards the above works. In the absence of such self-explanation on the part of the complainant, the necessary corollary would be, the payment of Rs.300/- by the complainant to the appellant was for the works to be undertaken by the licensed plumber, as mentioned in the letter dated 05.11.1986.

18. In this context, the enquiry officer, in his report, has opined that as an afterthought of the appellant, in collusion with K.G.Kothandapani, the letter, dated 05.11.1986, would have emanated.

19. In our view, the above said opinion has no legs to stand. Our above said observations would amply strengthen the genuineness of the letter, dated 05.11.1986, sent by Kothandapani. Even though the practice does not permit an Engineer to receive the amount from the customer on behalf of the licensed plumber, it should not be held prejudicial to the rights of the Assistant Engineer.

20. One more circumstance, which strikes the mind of this Court is, the management's failure to initiate criminal proceedings against the appellant in criminal court under the provisions of Prevention of Corruption Act, even though the prescribed procedures were adopted by the DSP of Vigilance and Anti-corruption Department, in organising a trap and recovering the bribe money from the appellant, to which no explanation is found in the materials produced before this Court, by the first respondent. The settled law on the subject is illuminatingly highlighted in a decision of the Hon'ble Supreme Court in *T.Subramanian* v. *State of Tamil Nadu*, 2006 (1) Supreme Court Cases 401. The operative portion of the said decision goes thus :

> "12. Mere receipt of Rs.200/- by the appellant from PW 1 on 10-7-1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5 (1) (a) or Section 5 (1) (d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to

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have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In *Punjabrao* v. *State of Maharashra,* (2002) 10 SCC 371 = 2004 SCC (Cri) 1130, the accused, a *patwari,* was on a campaign to collect loan amounts due to the Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under Section 313) holding thus : (SCC p.372, para 3)

"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

21. In order to establish and prove the criminal intention on the part of the accused, it is incumbent upon the prosecution to show that there was a demand by the accused for bribe and receipt of the same from the complainant. Even if it is proved or shown that the amount was received by the accused for a different purpose other than illegal gratification, it could not be termed as receipt of bribe. In the absence of proof as to demand and acceptance on the part of the accused, no guilt could be fastened on the appellant. Though the above said dictum has been laid down on the basis of the materials discussed in a criminal case by the Hon'ble Supreme Court, it is squarely applicable to the case on hand. It is to be reiterated that the aspects of demand of amount as bribe and acceptance of the same have not been established.

22. To sum up, it has to be held that the appellant received Rs.300/- from Mohammed Ghouse on behalf of the Plumber, for the works to be carried out, and, by no stretch of imagination, it could be termed to be receipt of illegal gratification. When the features in the conduct of domestic enquiry and enquiry report are scrutinised, the net result would be, the appellant is not guilty of the charges and the enquiry report is based on no evidence and it is perverse too.

For the reasons stated above, we are of the considered opinion that the orders passed by the learned single Judge are liable to be set aside. Hence, they are set aside and the Writ Appeals are allowed. The respondents are directed to reinstate the appellant

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forthwith with continuity of service and all other attendant benefits. Since the employer-employee relationship has got severed for over two decades, we deem it appropriate that ordering back wages at 50% would meet the ends of justice and the same is ordered accordingly. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Chairman and Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chennai-600 002.

2.The Secretary-cum-General Manager,
Chennai Metropolitan Water Supply
and Sewerage Board,
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Chennai-600 002.

+1cc to Mr.B.Sathakumar,Advocate Sr 58691
+1cc to M/s. Row & Reddy, Advocate Sr 58412

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